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March 7, 2025

BY ECF

Honorable Alvin K. Hellerstein
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

**Re: *United States v. Charlie Javice and Olivier Amar,*
23 Cr. 251 (AKH)**

Dear Judge Hellerstein:

We write respectfully on behalf of Defendant Olivier Amar to move for a mistrial based on the Government's gratuitous and unfairly prejudicial comments regarding Mr. Amar's right to remain silent before the jury. The Government's improper speaking objection suggested to the jury that it should not be permitted to see relevant evidence because the Government is not able to cross-examine Mr. Amar. Such a statement was designed not only to prevent Mr. Amar from offering relevant and exculpatory evidence, but also to suggest to the jury that Mr. Amar must testify in order to present a defense.

On March 5, 2025, in a speaking objection regarding an exhibit that Mr. Amar sought to offer, the Government stated the following:

Q. [By Mr. Cogan]: This is a discussion, a Slack between you and Mr. Amar from—do you see—the same day, June 24, 2021?

A. Yes. . . .

Mr. Cogan: Okay. I'd offer this, your Honor.

Mr. Fergenson: Judge, we [the Government] object on hearsay **because we can't cross the other declarant [Mr. Amar]. . . .**

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The Court: What about this document do you contend is relevant? Show it to me.

Mr. Cogan: Broadly speaking, just what Mr. Amar's instructions were as it related to the request that Ms. Javice had made. . . .

Mr. Fergenson: And **we [the Government] can't cross him [Mr. Amar]**.

Tr. at 1228:13-1229:11 (emphasis added). The bolded statements are improper and violate the Fifth Amendment, as they are tantamount to the Government arguing to the jury that the defendant must testify in order to rebut the Government's allegations. *United States v. Shoreline Motors*, 413 F. App'x 322, 324–25 (2d Cir. 2011) ("An accused has a Fifth Amendment right to remain silent during his criminal trial, and the prosecution cannot comment on that silence" (citing *Griffin v. California*, 380 U.S. 609, 615 (1965))). The law is clear that the Government cannot suggest to the jury that it is entitled to cross-examine the defendant in order for the jury to hear and understand exculpatory evidence. The fact that such a statement was made in connection with an objection to an exhibit offered by Mr. Amar, which objection was sustained by the Court, *see* Tr. at 1233:11-14, further underscores the unfair prejudice caused by the Government's unnecessary comments in support of its hearsay objection.

For these reasons, we respectfully request that the Court grant Mr. Amar's motion for a mistrial. In the alternative, the Court should admit the challenged exhibit (Government Exhibit 802-5) pursuant to Rule 807.

Respectfully submitted,

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